

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JAMES HOWARD KEARNS,

Petitioner,

v.

Civil Action No. 2:06cv58

THOMAS McBRIDE, Warden,

Respondent.

**REPORT AND RECOMMENDATION THAT APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES BE DENIED**

On June 9, 2006, the *pro se* petitioner, James Howard Kerns, filed a petition with the Court pursuant to 28 U.S.C. §2254 together with an Application to Proceed in forma pauperis and a Prisoner Trust Account Report with attached ledger sheets. However, he failed to submit a Consent to Collection of Fees. According, an Order was filed on June 26, 2006, requiring the petitioner to submit said form within twenty (20) days. On July 10, 2006, the petitioner submitted the required form. However, a careful review of the prisoner trust account statement reveals that as of June 5, 2006, the petitioner had an account balance of 18.56. Furthermore, as of July 3, 2006, he had a balance of \$33.93. Consequently, the petitioner had, and still has sufficient funds to pay the \$5.00 filing fee. Accordingly, the petitioner's request to proceed without prepayment of fees should be denied, and the petitioner should be ordered to pay the full filing fee of \$5.00.

The plaintiff may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the District Court Judge of Record. Failure to timely file

objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner.

DATED: July 19, 2006

/s John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE